

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

## **NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendant Palo Alto Networks, Inc. (“PAN”) submits the attached decision of the District of Delaware in *Prolitec Inc. v. Scentair Technologies, Inc.*, Civil Action No. 20-984-WCB (D. Del. Dec. 13, 2023) (Circuit Judge Bryson, sitting by designation), in further support of PAN’s Opposition to Centripetal’s Motion for Summary Judgment of No Invalidity (Dkt. 523).<sup>1</sup>

In *Prolitec*, plaintiff argued that defendant was “estopped from asserting anticipation by the ScentDirect and ScentStream products because those products are materially identical to [a patent], which [defendant] could have raised in its IPR challenge.” *Id.* at \*48. In response, defendant argued “that IPR estoppel is inapplicable to both products because IPR estoppel does not extend to device art, even if the device is materially identical to a patent or printed publication that could have been asserted.” *Id.*

<sup>1</sup> Notices of supplemental authority that “contain no legal argument and alert the Court to a case that was unavailable at the time of pleading” are “common practice” in this Court. *Ashghari-Kamrani v. United States Auto. Ass’n*, 2016 WL 8253884, at \*2 (E.D. Va. Mar. 18, 2016).

Circuit Judge Bryson recognized that “[t]here is a split among district courts . . . as to whether IPR estoppel extends to device art that is entirely cumulative of, i.e., materially identical to, prior art in the form of patents or printed publications that were or could have been raised in an IPR”; analyzed the applicable case law and statutory language; and concluded that “IPR estoppel does not apply to device art, even when that device art is cumulative of patents and printed publications that were or could have been asserted in a prior IPR.” *Id.* at \*49-\*51.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 2, 2024, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

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